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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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KURT F. JOHNSON,

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Petitioner,

No. C 08-02462 JSW

11

v.

**ORDER TO SHOW CAUSE RE
AMENDED PETITION FOR WRIT
OF HABEAS CORPUS**

12

UNITED STATES OF AMERICA, et al.,

13

Respondents.

(Docket No. 13)

14

15 On November 15, 2007, following a jury trial, Kurt F. Johnson (“Johnson”), was
16 convicted of one count of conspiracy to commit mail fraud and 34 counts of mail fraud, in
17 violation of 18 U.S.C. §§ 1841 and 1849. Following his conviction, Johnson was sentenced to
18 300 months imprisonment.

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On May 14, 2008, Johnson filed a Petition for Habeas Corpus. Because Johnson is in
custody based upon a federal sentence and because he claims that the court lacked subject
matter jurisdiction and that his right to a speedy trial was violated, the Court construed his
Petition as a Petition under 28 U.S.C. § 2255, which provides that:

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A prisoner in custody under sentence of a court established by Act of
Congress claiming the right to be released upon the ground that the sentence
was imposed in violation of the Constitution or laws of the United States, or
that the court was without jurisdiction to impose such sentence, or that the
sentence was in excess of the maximum authorized by law, or is otherwise
subject to collateral attack, may move the court which imposed the sentence
to vacate, set aside or correct the sentence. Unless the motion and the files
and records of the case conclusively show that the prisoner is entitled to no
relief, the court shall cause notice thereof to be served upon the United
States attorney, grant a prompt hearing thereon, determine the issues and
make findings of fact and conclusions of law with respect thereto.

1 The Court issued an Order to Show Cause, and on February 20, 2009, the United States
2 filed its response. On February 23, 2009, Johnson filed a Request for 30 Day Leave to Amend
3 Petition and Objection to Court's Lack of Jurisdiction, in which Johnson took issue with the fact
4 that the Court construed the Petition as having been brought pursuant to Section 2255. Johnson
5 asserted that "2255 was never presented by petitioner and its use is objectionable." On March
6 2, 2009, the Court granted Johnson's request for an extension of time.

7 On March 31, 2009, Johnson filed his Amended Petition, in which he asserts that his
8 Petition for a Writ of Habeas Corpus should be granted because 18 U.S.C. § 3231 is
9 unconstitutional and, thus, the trial court did not have subject matter jurisdiction over the
10 matter. Liberally construed, Johnson's claims merit an answer from respondent.

CONCLUSION

12 For the foregoing reasons and for good cause shown:

13 1. The Clerk shall serve by certified mail a copy of this order and the Petition and
14 all attachments thereto upon the Office of the United States Attorney. The clerk shall also serve
15 a copy of this order on Johnson.

16 2. Respondent shall file with the court and serve on Johnson, within 30 days of the
17 date of this order, an answer showing cause why the Court should not grant the Petition.

18 3. If Johnson wishes to respond to the answer, he shall do so by filing a reply with
19 the court and serving it on Respondent within 30 days of his receipt of the answer.

IT IS SO ORDERED.

Dated:April 20, 2009

Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KURT F. JOHNSON,
Plaintiff,
v.
USA et al,
Defendant.
Case Number: CV08-02462 JSW
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 20, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kurt F. Johnson
#13177-081
Safford Federal Correctional Institution
P.O. Box 9000
Safford, AZ 85548

Dated: April 20, 2009

Jennifer Ottolini
Richard W. Wiking, Clerk
By: Jennifer Ottolini, Deputy Clerk

United States District Court
For the Northern District of California

1
2 KURT F. JOHNSON,

3 Plaintiff,

4 v.

5 USA et al,

6 Defendant.

7 Case Number: CV08-02462 JSW

8 **CERTIFICATE OF SERVICE**

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18 Kurt F. Johnson
19 #13177-081
Safford Federal Correctional Institution
P.O. Box 9000
20 Safford, AZ 85548

21 Dated: April 20, 2009



22
23 Richard W. Wieking, Clerk
24 By: Jennifer Ottolini, Deputy Clerk

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